

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STEVEN AGEE,

Plaintiff,

vs.

ERIC S. LIMA, COREY M.
GORDEN, and THE CITY OF
OMAHA, a Political Subdivision,
and DOUGLAS COUNTY,
NEBRASKA, a Political
Subdivision.

Defendants.

Case NO. 8:18-CV-371

SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff and for his cause of actions alleges and states as follows, to wit:

1. This action is brought pursuant to 42 USCA 1983 for violation of the Plaintiff's civil rights.
2. That at all times pertinent hereto the Defendants, Lima and Gorden were duly sworn officers of the Omaha Police Department and were acting in their official capacity.
3. That at all times pertinent hereto the Defendants, Lima and Gorden were employees of the City of Omaha.
4. That on or about January 3, 2017, the Defendants, Officer Lima and Officer Gorden were dispatched to the Plaintiff's residence.
5. The Officers entered the Plaintiff's home without a warrant or his consent.
6. The Officers questioned the Plaintiff about being in possession of firearms without first advising of his rights under the 5th Amendment of the Constitution of the United States and Article I section 12 of the Constitution of the State of Nebraska.

7. The Plaintiff was arrested for being a prohibited person in possession of a firearm based first on a claim the Plaintiff was a convicted Felon and after proof furnished by the Plaintiff he was not a felon, upon a Harassment Protection Order being issue against him.

8. The Plaintiff was placed with Douglas County Corrections.

9. The Plaintiff remained in Douglas County Corrections for a period of 21 days.

10. That Douglas County Corrections is under the supervision of Douglas County, Nebraska.

11. Douglas County, Nebraska is a political subdivision of the State of Nebraska.

12. That while the Plaintiff was incarcerated he was denied his medication duly prescribed for pain management.

13. The Plaintiff has complied with the notice requirement of the Nebraska Tort Claims act.

COUNT I
False Arrest
Against Lima, Gorden, and The City of Omaha

14. For brevity herein, the Plaintiff realleges paragraphs 1 -13 of his Complaint.

15. At the time of Plaintiff's arrest, he was not a prohibited person to possess a firearm as defined by 28-2601 R.R.S. 1943.

16. The arrest of the Plaintiff was without a warrant and without probably cause. It was made upon a mistake of law in violation of the Plaintiff's rights as set out in 42 USCA 1983.

COUNT II
Unlawful Seizure
Against Lima, Gorden, and the City of Omaha

17. For brevity herein, the Plaintiff realleges paragraphs 1-16 of his Complaint.

18. At the time of his arrest, the Defendant Officers confiscated the Plaintiff's firearms in violation of the Plaintiff's rights under the Second and Fourth Amendments of the US Constitution and Article I Sections One and Seven of the Nebraska Constitution and in violation of 42 USCA 1983.

COUNT III
8th Amendment Violation
Against Douglas County, Nebraska Only

19. For brevity herein, the Plaintiff realleges paragraphs 1-18 of his Complaint.

20. At the time of the Plaintiff's incarceration, Plaintiff was under the care of a physician and was a recipient of pain management, which was duly and legally prescribed by the physician, and which required the Plaintiff to take prescribed pain medications.

21. During the Plaintiff's incarceration, Plaintiff was not allowed the use of the prescribed medication and was forced to suffer from extreme pain and withdrawal symptoms.

22. Denial of pain management medications is a policy and procedure implemented by the medical staff of the Douglas County Corrections.

23. That said actions subjected the Plaintiff to cruel and unusual punishment in violation of the 8th Amendment of the U.S. Constitution and Article I Section Seven of the Nebraska Constitution and 42 USCA 1983.

WHEREFORE, Plaintiff prays for judgment against the Defendants for special damages in the amount of \$2,400 in lost wages and general damages and attorney fees, as allowed under 42 USCA 1983, cost of this action, and for such other and further relief that the Court may deem just.

Dated this 1st day of November, 2018.

STEVEN AGEE, Plaintiff

/s/ William B. Zastera
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CERTIFICATE OF SERVICE

I, William B. Zastera, hereby certifies that on the 1st day of November, 2018, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the attorneys of record in this matter.

/s/ William B. Zastera